



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
FREEDOM OF INFORMATION ACT BRANCH
Washington, D.C. 20570

Via email

January 30, 2023

Re: FOIA Request NLRB-2023-000515

Dear Joseph S. Niver (Make the Road New Jersey):

This is in response to your request, under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, received on December 20, 2022, in which you seek specified records related to 1) *Power Survey Co.* 2) *On Target Staffing, LLC*, Case No. 22-CA-029333, and *On Target Staffing, LLC and Power Survey, LLC, a Joint Employer*, Case No. 22-CA-029356: “the initial charge form(s) if any, the 6/22/2010 Complaint and Notice of Hearing, the 07/06/2010 and 07/08/2010 Answers to Complaint, the 07/13/ 2010 Complaint and Notice of Hearing, the 07/20/2010, the 07/21/2010, and 07/28/2010 Answers to Complaint, the 8/17/2010 RD Orders, the 9/20/2010 Compliance Case - Certification of Posting, the 9/21/2010 Notice to Employees, and the 9/27/2010 Notice to Employees,” in addition to “any additional documents related to the settlement of the above mentioned cases, either a Board Settlement Agreement or a Private Non-Board Agreement if any.” You assumed financial responsibility for the processing of your request in the amount of \$37.00.

We acknowledged your request on December 20, 2022.

A search was conducted of the Agency’s electronic casehandling system, NxGen, which generally maintains NLRB case records from 2011 to present. Because the requested case files closed in 2010, before the Agency’s transition from paper files to NxGen, we also directed a search to the Agency’s Region 22 (New Jersey) office to search their own records pre-dating NxGen. Moreover, in accordance with the Agency’s document retention and disposition policy, the standard retention period for all case files, except for a small number of cases selected for permanent retention because of their historical value, is six years after the calendar year in which a case is closed. A review of the list of permanently retained cases maintained by the Agency’s Case Records Unit confirmed that neither of these cases was selected for permanent retention. Given these circumstances and the age of the cases, these searches located the attached 61 pages of responsive records, which are the only available records responsive to your request. The third amended charge in Case 22-CA-029356 and the executed informal settlement agreement were not located.

Regarding the specific documents that you requested and based on our review of the website case pages, please be advised that the July 8, 2010 Answer to Complaint was actually a duplicate of the July 6, 2010 Answer (so there is no July 8 Answer), and we noticed that several other records appeared on the Agency's case docket pages multiple times for the same date and record, such as multiple RD orders, and that charges were missing from the docket pages. The website has since been corrected to remove the duplicate entries and add the missing charges. You have been provided with the responsive, available records for these cases.

After a review, I have determined that portions of the attached records are exempt from disclosure under Exemptions 6 and 7(C) of the FOIA (5 U.S.C. § 552(b)(6) and (b)(7)(C)). Specifically, redactions have been made to protect the privacy interests of individuals named in the records. These redactions were made pursuant to FOIA Exemption 6, which pertains to information the release of which would constitute a clearly unwarranted invasion of personal privacy; and FOIA Exemption 7(C), which pertains to records or information compiled for law enforcement purposes, the release of which could reasonably be expected to constitute an unwarranted invasion of personal privacy. 5 U.S.C. § 552(b)(6) and (b)(7)(C).

For the purpose of assessing fees, we have placed you in Category A, commercial use requester. This category refers to requests "from or on behalf of a person who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made, which can include furthering those interests through litigation." NLRB Rules and Regulations, 29 C.F.R. § 102.117(d)(1)(v). Consistent with this fee category, you "will be assessed charges to recover the full direct costs of searching for, reviewing for release, and duplicating the records sought." 29 C.F.R. § 102.117(d)(2)(ii)(A). Charges are \$9.25 per quarter-hour of professional time. 29 C.F.R. § 102.117(d)(2)(i).

One hour of professional time was expended in reviewing for release the requested material. Accordingly, please remit \$37.00.

Payment Instructions: We are no longer accepting checks or money orders as payment. To submit payment for your FOIA request, please use www.pay.gov. From the www.pay.gov home page, scroll down to the bottom left corner to select "Pay a FOIA Request." Click "See all options" and go to "Filter By Agency" to check the box for the National Labor Relations Board. Continue following instructions on the website. Please remember to include the Invoice Number, which is the NLRB FOIA Case No., and the amount you intend to pay. Further, please be advised that all FOIA payments must be paid in full before any future FOIA requests are processed.

You may contact Jodilyn Breirather, the FOIA Specialist who processed your request, at (414) 930-7208 or by email at Jodilyn.Breirather@nlrb.gov, as well as the Agency's FOIA Public Liaison, for any further assistance and/or to discuss any aspect of your request. The FOIA Public Liaison, in addition to the FOIA Specialist, can further explain responsive and releasable agency records, suggest agency offices that may have responsive records, and/or discuss how to narrow the scope of a request in order to minimize fees and processing times. The contact information for the FOIA Public Liaison is:

Kristine M. Minami
FOIA Public Liaison
National Labor Relations Board
1015 Half Street, S.E., 4th Floor
Washington, D.C. 20570
Email: FOIAPublicLiaison@nlrb.gov
Telephone: (202) 273-0902
Fax: (202) 273-FOIA (3642)

After first contacting the Agency, you may additionally contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA dispute resolution services it offers. The contact information for OGIS is:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, Maryland 20740-6001
Email: ogis@nara.gov
Telephone: (202) 741-5770
Toll free: (877) 684-6448
Fax: (202) 741-5769

You may obtain a review of this determination under the NLRB Rules and Regulations, 29 C.F.R. § 102.117(c)(2)(v), by filing an administrative appeal with the Division of Legal Counsel (DLC) through FOIAonline at: <https://foiaonline.gov/foiaonline/action/public/home> or by mail or email at:

Nancy E. Kessler Platt
Chief FOIA Officer
National Labor Relations Board
1015 Half Street, S.E., 4th Floor
Washington, D.C. 20570
Email: DLCFOIAAppeal@nlrb.gov

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Any appeal must be postmarked or electronically submitted within 90 calendar days of the date of this letter. Any appeal should contain a complete statement of the reasons upon which it is based.

Please be advised that contacting any Agency official (including the FOIA Specialist, FOIA Officer, or the FOIA Public Liaison) and/or OGIS does not stop the 90-day appeal clock and is not an alternative or substitute for filing an administrative appeal.

Sincerely,

/s/ Synta E. Keeling

Synta E. Keeling
FOIA Officer

Attachment: (61 pages)